

Association of Condominium,  
Townhouse, and  
Homeowners Associations



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## Inside this issue:

New ACTHA Board Members	2
Tip of the Month	3
ACTHA Spring Conference	4
Spring Conference Registration	5
Negotiation vs. Board Duty cont.	6
New Commercial Members	7
Question of the Month	8

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## Upcoming ACTHA Events

Webinars Every Month!

**ACTHA's Spring Conference &  
Trade Show—Saturday, April 2**

For details, visit [www.actha.org](http://www.actha.org)

## "Balancing a Short Sale Negotiation vs. a Board's Fiduciary Duty"

By: Kelly Elmore of Penland & Hartwell, LLC

In today's market, it is now common for delinquent unit owners facing impending foreclosure to strike up a deal with their lenders and attempt to arrange a short sale of their unit. In a short sale transaction, the unit owner is responsible for paying the debt for remaining on the account for the unit, including any delinquent assessments, fees or costs. Typically, when a unit owner works with a lender to facilitate the short sale, the lender inevitably approaches the condominium association to "negotiate" on the amount of debt that is owed on the unit. This situation places the Board of Directors in a tricky situation and requires the Board to weigh its fiduciary obligation to the association with its duty to follow the law.

First and foremost, what is problematic is that the Illinois Condominium Property Act expressly prohibits the Board from negotiating and reducing the assessments owed for the unit. Section 18(o) of the Act states: *The association shall have no authority to forbear the payment of assessments by any unit owner.* As a result, the Act does not appear to provide the association (as managed by the Board) the authority to negotiate assessments. Accordingly, if the Board were to negotiate and agree to waive the assessments, the result may be a violation of the Act.

Continued on page 6



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*Continued from page 8*

**Home equity loans:** If the unit owner needs to finance a special assessment and has equity in their unit, (not as prevalent with the real estate market crash), they would normally be better off using their own home equity line of credit or add to their own mortgage. Both of these are deductible within certain limits. If Married and filing jointly the mortgage amount is limited to \$1,000,000 and the home equity line is limited to \$100,000.

**Summary:** The IRS has a publication that goes into all of the rules for deduction of mortgage interest. The Publication is number 936 and the web address is: <http://www.irs.gov/pub/irs-pdf/p936.pdf>

So to summarize, interest paid by a Cooperative, if it is mortgage interest is deductible. A Condominium, Townhome or Homeowners Association do not have the same treatment and it does not pass through to the unit owners. Interest paid on a related special assessment will probably be considered personal interest.

As with all tax matters, your situation may vary from the general assumptions of this explanation and you should consult your personal tax adviser.

**ACTHA's Board is pleased to announce that Diane Pagoulatos** of Whispering Lake TA in Lake Bluff and **Joyce Sampson** of 5319-21 S. Woodlawn CA in Chicago have been appointed to fill vacancies on ACTHA's Board. Their terms will expire this spring at which time they will stand for election by the general membership. Their appointment helps bring needed geographic representation and balance to ACTHA's board. Joyce is also a "Learn and Lead: ACTHA's Certification program" graduate.

To serve on ACTHA's Board, one must be a primary resident owner in an association in good standing with ACTHA.

# TIP OF THE MONTH

## Windows and Winter Weather

**Winter is often the time when we notice condensation on our windows. Does this mean your windows are bad and need to be replaced ?**

***What causes window condensation?*** While it may seem natural to blame the windows, interior condensation is really an indication of excess humidity in the home. When moist air comes in contact with the cold glass pane, the moisture condenses and forms water droplets. Indoor condensation is more apt to occur when the drapes are closed or the shades are pulled down because they restrict the flow of warm air over the glass surface. The three factors of condensation are: the energy efficiency of the window, the relative indoor humidity of the house, and the exterior and interior temperature. The ideal humidity range within a home is between 25 to 40 percent.

***What causes moisture to form on the outside of the windows?*** Dew causes moisture to form on the outside of the windows. It doesn't mean your windows are leaking or malfunctioning. In fact, exterior condensation is actually a sign of energy efficiency since it means the outside pane is thoroughly insulated from the heat outdoors.

***What causes condensation between the panes of glass?*** Condensation between two panes of glass in a multi-pane unit is an indicator of a critical problem- seal failure. Window systems with two or more panes of glass, and especially those with low emissivity coatings, rely on the glass-to-glass seal to ensure long-term energy efficiency. Condensation between the glass does require repair or replacement to fix the problem.

***When is a replacement needed?*** If the humidity in your home is within the ideal range and condensation persists, it may be time to consider replacing the windows. Other related issues that may warrant a replacement are windows that leak air or water, are rotted or bowed, have mold or mildew, or are single paned and inefficient.

*Cheryl Leahy of Renewal by Andersen ^ 2300 Ridge Dr. ^ Glenview 60025 ^ 800-595-1424  
Cheryl.leahy@andersencorp.com ^ www.renewalbyandersen.com*

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# ACTHA's Spring Conference Program

Your choice! Pick one program from each of the time slots offered!

For program descriptions, speakers, times, program outlines, and exhibitors visit  
ACTHA's website: [www.actha.org](http://www.actha.org) & click on "Education/April 2"

**9:00 a.m.—10:00 a.m.**

**(1) The Basics: Opening the Door**

New on the Board? Just bought into a common interest community association? Just starting out as a property manager? Then you've just opened the door on what you need to know. This session will highlight the most important items about Board member legal and fiduciary responsibilities and lay the groundwork for stepping through the door to examine the inside.

**(2) Non-Condo Properties: Closing the Door**

Illinois has "closed a door" by passing a law affecting non-condo properties which became effective in July. Like all new laws, there are questions and there will be on-going changes. This session will walk attendees through the new law, highlighting and explaining sections board members and managers need to be most aware of.

**(3) Tools For Decision Making**

Board members are required to balance competing needs within the association. This seminar discusses the decision making process, including specific issues associations may be facing such as financial matters and repair/replacement projects. Establishing a set of goals, priorities and long term planning to help guide future decisions will be discussed.

**11:15 a.m.—12:15 p.m.**

**(1) Governance: Elections**

This session will delve into all aspects of conducting an election including but not limited to notice, proxies, candidate profiles, percentage of ownership, secret ballots, counting ballots, ballot review, filling Board vacancies, and the issue ACTHA hears about the most-- owner apathy and the lack of a quorum to conduct business.

**(2) Finances: Budgets**

Base line budgeting? Zero based budgeting? Line item budgeting? Increase or cut across the board with a set percentage? In these economic times Boards need to be as on-target with their budgeting as they can be. This session will explore best practices of how to budget, what happens when an association exceeds the budget, collections do not meet expectations, and where reserves fit in.

**(3) The Property: Insurance**

This session is designed to delineate what insurance the association must have under the law and what a Board should consider when evaluating and obtaining insurance coverage. It will also address what an association is responsible for, what owners are responsible for and why it is important for the Board to communicate that to owners.

**1:00 p.m.—2:00 p.m.**

**(1) Governance: Meetings**

Board, Owner, Committee, Commission, Ad Hoc, Advisory, Closed, Special – all are types of meetings an association deals with. This session will cover meetings which have legal obligations under the law requiring special attention such as notice and quorum, as well as the role of committees in helping boards manage the affairs of the property while investing residents with a sense of ownership.

**(2) Finances: Collections & Foreclosures**

Associations can never "get out from under" when it comes to collections. Vigilance to a collection policy clearly outlined for owners and adherence to its enforcement are key to a board member's legal and fiduciary responsibility. But even then an association may face an unexpected number of foreclosures. There are steps a board can take and this session will outline the collection process and foreclosure options.

**(3) The Property: Maintenance vs. Repair vs. Replacement**

When it comes to "the property", a Board may have options. This session will help in determining what strategy to follow in assessing a course of action for the various common and limited common elements a Board is responsible for by providing guidance in who to call on and general "rule of thumb" practices. It will also address budgets and reserves and their relationship to maintenance, repair and replacement.

# ACTHA's Spring Conference Registration Form

**YES!!** I want to register for the Conference and Trade Show on Saturday, April 2, 2011 at the Drury Lane in Oakbrook Terrace. Registration fee includes: seminars, continental breakfast, lunch, Trade Show, and materials.

Fee Schedule: Member rate: \$45 or \$40 if sending 3 or more from the same association; Non-member rate: \$120 per person

Name of Association: \_\_\_\_\_

Address: \_\_\_\_\_ City/Zip: \_\_\_\_\_

Phone #: \_\_\_\_\_ Email Address: \_\_\_\_\_

Name(s) of Individual(s) Attending (please print): \_\_\_\_\_

**AMOUNT ENCLOSED:** \_\_\_\_\_

Please make checks payable to ACTHA. Send to: 28 E. Jackson, Suite 910; Chicago, IL 60604 or you may register online using a credit card.  
*NOTE: Confirmations are not sent except upon request. No refunds are given after March 25 and there will be an additional charge of \$20 per person for anyone registering after March 30 or at the door. All other cancellations are subject to a 25% handling fee.*

**ACTHA is pleased to announce an enhanced search function** on its web site making it easier for you to find vendors and specific services they offer. This search function appears in the upper right hand box of the home page.

**LEGISLATION**—The Illinois General Assembly is back in session. The legislative process moves much quicker than our newsletter so to keep up-to-date, check our web site under “Legislative Activity.” You may also sign up to receive email alerts.



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On the other hand, the Board also has a fiduciary duty to its owners to make decisions that are in the best financial interest of the association. As such, if the Board were to turn down a short sale proposal that would allow the association to recover significantly more money than it would otherwise receive if the property were to go to foreclosure or bankruptcy, then it could be argued that the result is inconsistent with the Board's fiduciary duty to its unit owners.

- ⇒ How much money will be lost if the association accepts the short sale?
- ⇒ What evidence has the unit owner provided that he/she will likely file foreclosure/bankruptcy? (i.e. How does the Board evaluate the veracity of a unit owner's statement that he/she is going to file for foreclosure or bankruptcy)
- ⇒ How long will the short sale take to complete?
- ⇒ Does the Association have an interest in collecting a decreased amount of debt now, versus the risk of not collecting anything in the future if the owner files for bankruptcy?

*How does the board reconcile its duty to follow the provisions of the Act, with its fiduciary obligation to its unit owners?*

As an initial note, the Board should be extremely cautious in agreeing to a reduction of assessments to facilitate a short sale and such a circumstance should be rare. However, if the Board does decide to consider a negotiation and decrease the amount of assessments in a short sale proposal, the Board should weigh various factors in deciding whether to negotiate and reduce the amount of assessments and other common expenses or to refuse the reduction. The Board may consider factors such as:

- ⇒ The current financial situation of the defaulting unit owner (i.e. is there a likelihood that not only will the unit go into foreclosure, but also, the owner will file for bankruptcy)

The Board should develop a policy to evaluate requests on a case by case basis. If the Board opts to consider a negotiation, the Board should proceed through the evaluation process and carefully consider all possible results. If the Board logically concludes that a negotiation and decrease of assessments would be overall in the best interest of the Association, then it is unlikely that the Board would be open to liability for breach of fiduciary duty, as such action would be consistent with the Business Judgment Rule.

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## Question of the Month

By: Brad L. Schneider of CondoCPA

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**Q-** Can an individual deduct interest on their personal tax return for interest paid by the Association?

**A.** The answer is one that addresses a lot of different situations. Below is a summary of the various situations and the related answers:

**Cooperatives:** A cooperative housing corporation or other entity actually holds the title to the building. They can obtain a loan of which the collateral is the building. This would be called a mortgage loan if the collateral is the building, similar to a single family dwelling. If the Cooperative secures a mortgage loan the shareholders can take their portion on their personal tax returns as mortgage interest. There is a pass through deduction for this type of entity. The Cooperative should issue a Form 1098 for the mortgage interest to each shareholder.

**Condominiums, Townhomes and Homeowner's Associations:** When a condominium, townhouse or homeowners Association obtains a loan, the loan is secured by the future assessments of the Association, not real estate. Therefore, these loans are not mortgages so the interest is not considered mortgage interest.

**In addition, there is no provision in the IRS code to provide for interest from these entities to pass through to the unit owners.** If the owner is a non-resident investor and paying interest on their special assessment to pay the loan then they probably can deduct the interest they are paying as a business or rental expense. If the unit owner lives in the unit and they are paying interest with the special assessment to pay the loan then the interest is either considered personal interest, (which is not deductible), or investment interest which is deductible up investment income.